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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ADAM BAGARELLA and DAVID W. SAMPSON¹

Appeal 2016-005904
Application 13/224,510
Technology Center 3600

Before JAMES R. HUGHES, JOHN P. PINKERTON, and
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

HUGHES, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ According to Appellants, the real party in interest is Rabican Companies, Inc.

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner's Final Decision rejecting claims 1–24 and 26–40. Claim 25 has been canceled. Final Act. 1–2; App. Br. 3–4.² We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellants' Invention

The invention generally relates to systems and methods of facilitating financial transactions (pledges of monetary value) utilizing a computer system (user interface and server). An exemplary method provides a graphical user interface displaying selectable performance metrics associated with a donation generating event and an input for a pledge (having a monetary value). A computer server receives, via a computer network, a selected performance metric and pledge input, which further comprise a pledge attribute information package, including a subject of the performance metric, the performance metric, and the pledge. The system stores the pledge attribute information and periodically queries (and obtains) a measured value for the selected performance metric, which is stored by the system. The system then calculates a variable pledge amount by applying the pledge of monetary value to the measured value of the selected performance metric. Spec. 1:8–9; 2:15–7:12; Abstract.

² We refer to Appellants' Specification ("Spec.") filed Sept. 2, 2011 (claiming benefit of US 61/379,550 filed Sept. 2, 2010); Appeal Brief ("App. Br.") filed Nov. 30, 2015; and Reply Brief ("Reply Br.") filed May 18, 2016. We also refer to the Examiner's Answer ("Ans.") mailed Mar. 18, 2016, and Final Office Action (Final Rejection) ("Final Act.") mailed July 15, 2015.

Representative Claim

Independent claim 1, reproduced below, further illustrates the invention:

1. A method of facilitating pledges of monetary value between a pledgee and pledgor, the method comprising the steps of:

providing, at a computer server, a graphical user interface having a plurality of selectable performance metrics provided from a donation generating event, and further having at least one input for a pledge of monetary value;

receiving, at a computer server via a computer network, a selected performance metric of the plurality of performance metrics and the at least one input for a pledge of monetary value, wherein the receiving the selected performance metric and the at least one input for a pledge of monetary value comprises receiving an information package of pledge attributes, the package of pledge attributes comprising a subject of the performance metric, the performance metric, and the pledge of monetary value;

storing the received selected performance metric and the received input of a pledge of monetary value at a computer readable memory of a computer server system;

periodically querying and obtaining, at a computer server, a measured value of the selected performance metric and storing said measured value in the computer readable memory of the computer server system; and

calculating, at an automated programmed computer server, a variable pledge amount by applying said pledge of monetary value to the measured value of the selected performance metric and storing the pledge amount in the computer readable memory of the computer server system.

Rejection on Appeal

The Examiner rejects claims 1–24 and 26–40 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.

ISSUE

Based upon our review of the record, Appellants' contentions, and the Examiner's findings and conclusions, the issue before us follows:

Did the Examiner err in rejecting claims 1–24 and 26–40 under 35 U.S.C. § 101 as not being directed to patent-eligible subject matter?

ANALYSIS

Appellants argue independent claims 1 and 40 together as a group and do not separately argue dependent claims 2–24 and 26–39. *See* App Br. 7–15. We select independent claim 1 as representative of Appellants' arguments with respect to claims 1–24 and 26–40. 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner rejects the claims and, in particular, claim 1 as being directed to patent-ineligible subject matter in that the claims as a whole are directed to fundraising or collecting money which is fundamental economic practice . . . and [a] method of organizing human activities (fundraising, performance statistics, and pledges). The claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception

. . .

The[] steps of facilitating fundraising and pledges (donation related) and enabling a program for effecting the scheme (e.g., providing, receiving, storing, query, calculation, etc.) is [an] abstract idea (see *In re Alice Corp.*) because [it] would be routine in any computer implementation, and the claim does not effect an improvement to another technology or technical field; the claim does not amount to an improvement to the functioning of a computer itself.

. . .

As such, the claim, when considered as a whole, is nothing more than the instruction to implement the abstract idea (i.e. using Internet to facilitate collecting donation) in a particular, albeit well-understood, routine and conventional technological environment.

Final Act. 2–3; *see* Ans. 2–7. Appellants contend that the claims as a whole are not directed to an abstract idea or patent-ineligible concept because “[c]laim 1 does not set forth a basic concept that is similar to any abstract idea previously identified by way of example by U.S. courts” and “[c]laim 1 also does not set forth a fundamental economic practice previously identified by way of example by U.S. courts. The subject matter of claim 1, for example, is not similar to hedging in an energy risk management method in *Bilski* [*v. Kappos*, 561 US 593 (2010)].” App. Br. 9. Appellants further contend that “claim 1 as a whole amounts to significantly more than [a judicial] exception” because, like the claims in *DDR Holdings*,

the claimed solution is necessarily rooted in computer technology in order to overcome a problem “specifically arising in the realm of computer networks,” or more specifically, to overcome a problem specifically arising in post-Internet technology, and not “merely reciting the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet.”

App. Br. 9–10 (quoting *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014)). *See* App. Br. 10–13; Reply Br. 2–6.

Under 35 U.S.C. § 101, a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” The Supreme Court has “long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass’n for*

Molecular Pathology v. Myriad Genetics, Inc., 133 S. Ct. 2107, 2116 (2013)).

The Supreme Court in *Alice* reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 77–80 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 134 S. Ct. at 2355. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts” (*id.*), e.g., to an abstract idea. If the claims are not directed to an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo* 566 U.S. at 78, 79).

The Court acknowledged in *Mayo* that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 566 U.S. at 71. We, therefore, look to whether the claims focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016).

Turning to the first step of the eligibility analysis, the Examiner finds claim 1 is directed to the abstract idea of “fundraising or collecting money which is fundamental economic practice” and “organizing human activities (fundraising, performance statistics, and pledges)” utilizing a conventional

computer system. Final Act. 2–3; *see* Ans. 2–7. We agree with the Examiner that Appellants’ claim 1 (and the other pending claims) are directed to a patent-ineligible abstract idea.

Instead of using a fixed definition of an abstract idea and analyzing how claims fit (or do not fit) within the definition, “the decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen — what prior cases were about, and which way they were decided.” *Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (citing *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016)). As part of this inquiry, we must “look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.” *Affinity Labs. of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (citation omitted).

Here, Appellants’ claims generally relate to utilizing a computer system for calculating a variable donation (pledge) amount by applying (multiplying) a monetary pledge amount by a particular measured statistical value (performance metric), as found by the Examiner (*supra*). This is consistent with how Appellants describe the claimed invention. *See* Spec. 2:15–21 (the invention provides “systems and methods for conducting fundraising activities over networks” and “a model around performance-based donations in which donors can pledge monetary amounts against performance metrics that arise out of any event that produces quantifiable metrics.”). More particularly, in claim 1 (and as commensurately recited in independent claim 40), a computer server provides a graphical user interface (GUI) allowing a user to select a particular metric and enter a corresponding

pledge amount; the server stores the data; the server queries the selected metric and returns a resulting statistical value; and the server calculates “a variable pledge amount by applying said pledge of monetary value to the measured value of the selected performance metric.”

Our reviewing court has said that abstract ideas include collecting and analyzing or manipulating monetary and statistical information. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362 (Fed. Cir. 2015) (finding claims directed to price optimization on a generic computer to be an abstract idea); *Elec. Power*, 830 F.3d at 1354 (collecting and analyzing information (e.g., recognizing certain data within the dataset) are abstract ideas).

Here, the selection of a metric, entering of a pledge, and determination of a variable donation (pledge) utilizing collected data and statistical information is similar to the abstract ideas of collecting, analyzing, and manipulating information to automatically determine pricing found ineligible for patent protection in *OIP Techs.*, 788 F.3d at 1362. In other words, the instant claims are akin to the claims for collecting, analyzing, and manipulating information (data) found to be abstract in *Elec. Power*, 830 F.3d at 1354, and in particular, collecting, analyzing, and manipulating financial information found to be abstract in *OIP Techs.*, 788 F.3d at 1362. In *OIP Techs.*, the Federal Circuit explained that the “concept of ‘offer based pricing’ is similar to other ‘fundamental economic concepts’ found to be abstract ideas by the Supreme Court and this court.” *OIP Techs.*, 788 F.3d at 1362 (citing *Alice*, 134 S. Ct. at 2357; *Bilski*, 561 U.S. at 611 (risk hedging); *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (using advertising as an exchange or currency); *Content*

Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (data collection); *Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1346 (Fed. Cir. 2013) (generating tasks in an insurance organization)). Thus, we agree with the Examiner that the claims are directed to an abstract idea of facilitating fundraising by determining a variable pledge. Notably, this characterization is consistent with Appellants’ description of the claimed invention (*supra*).

Having found Appellants’ claims are directed to an abstract concept under *Alice*’s step 1 analysis, we next address whether the claims add significantly more to the alleged abstract idea. As directed by our reviewing Court, we search for an “‘inventive concept’ sufficient to ‘transform the nature of the claim into a patent-eligible application.’” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *Alice*, 134 S. Ct. at 2355). The implementation of the abstract idea involved must be “more than performance of ‘well-understood, routine, [and] conventional activities previously known to the industry.’” *Content Extraction*, 776 F.3d at 1347–48.

Here, the Examiner found that Appellants’ claims do not add significantly more. *See* Final Act. 2–3; Ans. 2–7. Appellants, on the other hand, contend the claims amount to more than the judicial exception because the claims are analogous to the claims of *DDR Holdings*. *See* App. Br. 9–13; Reply Br. 2–6 (citing a number of district court case purportedly supporting Appellants’ interpretation of *DDR Holdings*). Appellants misconstrue *DDR Holdings*, and we disagree with Appellants’ arguments.

As explained by our reviewing Court in *OIP Techs.*, “the automation of the fundamental economic concept of offer-based price optimization

through the use of generic-computer functions” does not “transform the claimed abstract idea into a patent-eligible application” (quotations omitted) and “relying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.” *OIP Techs.*, 788 F.3d at 1363.

In *DDR Holdings*, the court held that a claim may amount to more than any abstract idea recited in the claims when it addresses and solves problems *only* encountered with computer technology and online transactions, e.g., by providing a composite web page rather than adhering to the routine, conventional functioning of Internet hyperlink protocol. *See DDR Holdings*, 773 F.3d at 1257–59. In contrast, claim 1 performs a process that collects, analyzes, and manipulates information (i.e., data) (user pledges, user selected metrics, queried statistics corresponding to the selected metrics) to determine a variable pledge (a donation) based on the user pledges and queried statistics (i.e., data analysis and manipulation) utilizing a conventional computer. *See* Final Act. 2–3; Ans. 2–7; Spec. 1:8–9; 2:15–7:12; *cf.* App. Br. 9–13; Reply Br. 2–6.

Data collection, analysis, and manipulation are not technical problems as discussed in *DDR*; they are organization and/or efficiency problems. *See* Spec. 1:8–4:10; App. Br. 12. Collecting pledge and metric information, collecting statistics, and utilizing the collected information to determine a user’s donation (variable pledge) is a commercial solution to the efficiency problem, not a technical solution. This commercial solution may be assisted using a general-purpose computer to perform the data collection, analysis, and manipulation processes, but does not arise specifically in the realm of computer networking or improve how the computer itself functions. As we

previously explained, the instant claims are more akin to the claims for analyzing information found to be abstract in *OIP Techs.*, 788 F.3d at 1362, and *Elec. Power*, 830 F.3d at 1353.

We agree with the Examiner that the additional limitations, separately, or as an ordered combination, do not provide meaningful limitations (i.e., do not add significantly more) to transform the abstract idea into a patent-eligible application. *See e.g.*, Final Act. 2–3. Indeed, the claim merely recites processes for collecting and manipulating data, e.g., providing a GUI and utilizing database operations. Such steps are all routine and conventional and well-understood computer functions of a general processor. The Specification supports this view in discussing the processes implemented in software operating on generic computers to perform the recited data presentation, collection, and manipulation steps. *See Spec.* 4:1–12; 14:1–16:15. “[T]he use of generic computer elements like a microprocessor” to perform conventional computer functions “do[es] not alone transform an otherwise abstract idea into patent-eligible subject matter.” *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1096 (Fed. Cir. 2016) (citing *DDR Holdings*, 773 F.3d at 1256).

Moreover, we find this type of activity, i.e., receiving, collecting, processing, analyzing, and manipulating data and determining a value, includes longstanding conduct that existed well before the advent of computers and the Internet, and could be carried out within the human mind alone or by a human with pen and paper. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) (“That purely mental

processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*”).³

For at least the reasons discussed above, we are not persuaded of Examiner error in the rejection of claim 1 under 35 U.S.C. § 101. Thus, we sustain the Examiner’s rejection under § 101 of independent claims 1 and 40, and also dependent claims 2–24 and 26–39, which fall with claim 1.

CONCLUSION

On this record, Appellants have not shown by a preponderance of the evidence that the Examiner erred in rejecting claims 1–24 and 26–40 under 35 U.S.C. § 101.

DECISION

We affirm the Examiner’s rejection of claims 1–24 and 26–40.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

³ *CyberSource* further guides that “a method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101.” *CyberSource*, 654 F.3d at 1373.